IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

And
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 9725 of 2004

Between:

A. Nagabhushana Rao, S/o. Late Sri A. Adinarayana,
Working as Senior Assistant, O/o. A.P Administrative Tribunal,
Purani Haveli, Hyderabad. R/o. H.NO. 2-25, A.P.A.T Colony, Thurkayamzal 'X' Roads, Hyderabad.

..... PETITIONER

AND

1 Sri K. Sivalinga Prasad, S/o. Late Kotaiah,
Andhra Pradesh Administrative Tribunal, Hyderabad.
2 Smt. R. Vijayalakshmi, Senior Assistant, O/o. The Andhra Pradesh Administrative Tribunal,
Hyderabad.
3 The Andhra Pradesh Administrative Tribunal, rep by its Registrar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction especially one in the nature of Writ of Certiorari calling for the records relating to orders dated 23-4-2004 in O.A.No. 7048/2003 on the file of Hon'ble A.P. Administrative Tribunal and quash the same.

Counsel for the Petitioner: MR.M.SURENDER RAO

Counsel for the Respondent No.1: MR.P.V.SANJAY KUMAR

Counsel for the Respondent Nos. 2 & 3: None appeared.

The Court, at the stage of admission, made the following:

(Oral order: Per: The Hon'ble Mr. Justice Goda Raghuram)

The order of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') dated 23-04-2004 in O.A.No. 7048 of 2003, is assailed herein.

By a proceeding of the 3rd respondent – the Tribunal – dated 15-10-2003, certain promotions were made to the posts of Senior Assistants in the Tribunal and by another proceeding of even date, the claim of the 1st respondent herein for such promotion was rejected. Assailing the two proceedings, the 1st respondent filed O.A.No. 7048 of 2003 impleading, apart from the Tribunal, the writ petitioner and the 2nd respondent herein. The writ petitioner and the 2nd respondent were promoted as Senior Assistants by the proceedings dated 15-10-2003.

The case of the applicant is that he being a graduate is eligible for promotion as a Senior Assistant under the Andhra Pradesh Administrative Tribunal Non-Gazetted Service Rules, 1981 (for short 'the Rules') issued in G.O.Ms.No.541, General Administration (SPF.B) Department dated 15-10-1981. He contended that he is eligible for promotion in the third vacancy out of four vacancies of Senior Assistants, on account of his graduate qualification and the writ petitioner is not so eligible. It was also contended that the writ petitioner holding the post of a Caretaker in the Tribunal service is ineligible for promotion as Upper Division Clerk, as he does not

possess a graduate qualification as required under Rule 6(1)(d) of the Rules. The Tribunal persuaded by the contentions and logic of the applicant, allowed the O.A. declaring that the writ petitioner is ineligible for promotion as Senior Assistant from the category of Caretaker, as he did not have a graduate qualification and declared that the applicant is entitled to be promoted as Senior Assistant in the third vacancy.

The Constitution of the non-gazetted service of the Tribunal is set out in Rule 3 of the Rules. The post of Upper Division Clerk is enumerated as Category-II and Lower Division Clerk and Typist are enumerated as Categories-III and IV. Sub-rule (4) of Rule 3 constitutes the temporary post of Caretaker as a distinct category in the Andhra Pradesh Ministerial Service Rules. According to Rule 4 of the Rules, appointment to the post of Upper Division Clerk/Senior Assistant is from two sources viz., (a) By promotion from the post of Caretaker; and (b) By promotion from the post of Lower division Clerks/Typists in the Andhra Pradesh Administrative Tribunal in the ratio of 3:1. A proviso enacts that in every cycle of four (4) vacancies, the fourth vacancy shall be filled from the post of Typists in the Andhra Pradesh Administrative Tribunal by a person qualified under Rule 6 of the Rules. A further proviso mandates that in case of a Typist eligible for promotion, if he holds a degree in Arts, Science, Commerce or Law, as mentioned in Rule 6 (i)(b) he shall be promoted in the third vacancy. A 'note' to sub-rule (1) of Rule 4 of the Rules states that if there is no qualified and suitable member from amongst the Typists, the turn will lapse and the vacancy shall be filled by next turn in the order of rotation without taking account of any such lapsed turns in filling future vacancies.

The qualifications for holding each of the posts is set out in Rule 6 of the Rules whereunder no person is eligible for promotion to the post of Upper Division Clerk from the post of Caretaker, unless he holds a degree in Arts, Science, Commerce or Law.

On facts, the writ petitioner, who entered service as Typist in the year 1981 was promoted as Caretaker on 10-01-1994. It requires to be noticed that the post of Caretaker became vacant in January, 1994 on account of the promotion of the then incumbent as a Senior Assistant. Four individuals were considered for promotion as Caretaker, including the petitioner, who was a Typist and two other persons belonging to the category of Junior Assistant. The first two individuals, including the 2nd respondent herein, declined promotion to the post of Caretaker. Consequently,

the petitioner was promoted as a Caretaker in January, 1994, he was put on probation, his probation was declared and his services were regularized in the category of Caretaker. By the year 2003, the petitioner was, therefore, holding the post of Caretaker on a regular basis for over nine (9) years.

In defence to the claim in the O.A., the petitioner contended that he still retained his lien in the post of Typist, that notwithstanding his regular appointment to the post of Caretaker in January, 1994, he could always opt to return to the post of Typist and thus legitimize his promotion to the post of Senior Assistant; and further that from the category of Typist, as a non-graduate, he is entitled and legitimately so, to be appointed to the fourth vacancy. None of these contentions commended acceptance by the Tribunal, which found that the petitioner having been regularly appointed as Caretaker in January, 1994 and his probation also declared, legitimately fell to be considered as having been substantively appointed to the post of Caretaker. He could claim further career advancement to the post of Senior Assistant only from the post of Caretaker. As he did not have a graduate qualification as required under Rule 6(1)(d) of the Rules, his promotion as a Senior Assistant by the impugned order dated 15-10-2003 of the 3rd respondent herein was incompetent, illegal and inoperative, ruled the Tribunal.

It is not in dispute that the applicant, the 1st respondent herein, is qualified and eligible for appointment to the third vacancy in the category of Senior Assistant, as he had the graduate qualification.

In this writ petition, the principal thrust of the petitioner's challenge is that there was no necessity or justification for the Tribunal to have invalidated his appointment. It is contended by Mr. Surendar Rao, learned counsel for the petitioner and with considerable emphasis that the entire and consistent case of applicant was with regard to the third vacancy in the post of Senior Assistant, which was earmarked for Typists having graduate qualification. Insofar as the fourth vacancy is concerned, to which he was appointed by the impugned order of the Tribunal dated 15-10-2003, the applicant had no claim either asserted or arising. In the circumstances, the Tribunal could only to have considered whether the appointment of the 2nd respondent herein to the third vacancy was valid and if such appointment of the 2nd respondent was found invalid, the Tribunal could only have set aside such appointment and granted relief to the applicant insofar as the third vacancy is

concerned. The Tribunal was in error to have declared the appointment of the petitioner to the fourth vacancy in the post of Senior Assistant in the Tribunal as invalid, is the meat of the petitioner's contention.

The case of the applicant, as presented to the Tribunal, was clear and unambiguous. In the challenge to the proceedings of the 3rd respondent dated 15-10-2003 whereby the petitioner and the 2nd respondent herein were promoted as Senior Assistants, the applicant had specifically contended that the appointment of the petitioner as Senior Assistant was incompetent, as he did not have the requisite qualification. The Tribunal went into this issue and rightly held that the petitioner is not qualified for promotion as Senior Assistant, while also coming to the conclusion that the petitioner having been promoted in the year 1994 as Caretaker, having put on probation and also duly regularized as such, should be considered as Caretaker and as such did not qualify for promotion in terms of Rule 6(1)(d) of the Rules. Consequent on the finding as to the petitioner's ineligibility for promotion, the Tribunal rightly declared his promotion is invalid and that the applicant is entitled to be considered for promotion in the third vacancy. It may be that if there are no other qualified typists in the service, the vacancy available for promotion from the category of Typists would lapse and the fourth vacancy could be filled up by the next turn in the order of rotation as provided in the 'note' to Rule 4 of the Rules i.e., a contingency and factual matrix that will have to be determined by the 3rd respondent in accordance with the factual position in the categories of Typists and Lower Division Clerks. The findings of the Tribunal as to the ineligibility of the petitioner and consequent invalidation of his promotion, however, calls for no interference.

For the reasons stated above, we find no infirmity in the judgment of the Tribunal warranting interference. The writ petition is, accordingly, dismissed at the stage of admission.

J. CHELAMESWAR, J

GODA RAGHURAM, J

Dt. 02-09-2004.

PVKS/*

To

1. The Registrar, the Andhra Pradesh Administrative Tribunal, Hyderabad.

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